U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16025402

Date: JULY 20, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a financial analyst, seeks second preference immigrant classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that he is an individual of extraordinary ability or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is an advanced degree professional and eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition to the definition of "advanced degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty."

To demonstrate eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. Although the Petitioner initially claimed to qualify for the underlying EB-2 classification as both a member of the professions holding an advanced degree and as an individual of exceptional ability, the Director's decision did not consider whether the Petitioner qualified as an advanced degree professional.

On appeal, the Petitioner points to the Director's failure to address this issue in the request for evidence (RFE). The regulation at 8 C.F.R. § 103.2(b)(8), however, permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Further, even if the Director had erred as a procedural matter, it is not clear what remedy would be appropriate beyond the appeal process itself, which provided the Petitioner an opportunity to supplement the record and establish that he is either an advanced degree professional or an individual of exceptional ability. Therefore, it would serve no useful purpose to remand the case simply to afford the Petitioner another opportunity to supplement the record with new evidence.

Notably, the Petitioner does not claim to be an individual of exceptional ability or even address any of the criteria at 8 C.F.R. § 204.5k(3)(ii) on appeal. Therefore, we consider this claim abandoned.[4] Instead, the Petitioner relies upon his academic records, educational evaluation, and a letter from his employer to establish that he is an advanced degree professional.

The "Evaluation of Training, Education, and Experience" (evaluation) states that the Petitioner "enrolled in the Master's degree program in Business Administration at [redacted] an

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

accredited institution of higher education in Brazil. [The Petitioner] completed his studies in 2014 and he received a Master of Business Administration in Corporate Management."

Contrary to the evaluator's description, however, the Petitioner received a "Certificate of the Lato Sensu Graduation Course" from [redacted] According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),[5] "[p]rofessional development and specialization programs are considered *lato sensus* (wide sense graduate-level programs) and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees." It also states that "[c]redits earned in *lato sensu* graduate programs may later be transferred into a master's degree program given that institutional requirements are met and institutional approval is granted."[6]

The evaluator ultimately concludes that:

> Considering that a four-year Bachelor's degree[7] followed by more than five-years of full-time work experience in the field of Business Administration is equivalent to a Master's degree in Business Administration, it is my expert opinion that [the Petitioner] with a four-year degree and more than fifteen years of experience, has no less than the equivalent of a Master's degree in Business Administration.

However, the evaluator does not claim to have reviewed any employment letters to establish the Petitioner's work history or experience, as required by 8 C.F.R. § 204.5(k)(3)(i)(B).[8] As a result, the bass for the evaluator's determination that "[t]he responsibilities handled by [the Petitioner] throughout his career are indicative of Master's-level coursework" and were "progressively responsible" is unclear.

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.*

The Petitioner also argues that because the Director "confirmed that" the letter from his previous employer, [redacted] was "sufficient for the plain language requirement[]" for the criterion at 8 C.F.R. § 204.5k(3)(ii)(B), then it also establishes that he is an advanced degree professional. However, unlike the exceptional ability criterion which only requires a "showing that the alien has at least ten years of full-time experience in the occupation," the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B)

[5] We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano,* No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

[6] *See* https://www.aacrao.org/edge/country/brazil for information regarding the education system in Brazil and credential equivalencies (last accessed July 20,2021).

[7] Based upon the information in EDGE, the Petitioner has established that his four–year bachelor's degree is the foreign equivalent of a U.S. degree

[8] The job duties listed in the "professional experience" section of the evaluation are taken directly from the Petitioner's resume.

requires "evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." The referenced letter only confirms that the Petitioner "was an employee of this company in the period from 6/18/2007 to 3/27/2018 and his last position was General Manager – Middle." Without additional information regarding the Petitioner's duties, we are unable to conclude that the Petitioner has at least five years of progressive experience as required.

For all of these reasons, without more, the Petitioner has not established that he is an advanced degree professional. In addition, as the Petitioner has not met the threshold requirement for this classification, further analysis of his eligibility for a national interest waiver would serve no meaningful purpose.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.